

Remarks

This is responsive to the Office Action mailed May 13, 2008. The amendments and remarks do not include new matter and are only clarifying in nature. That is, the claim amendments are without prejudice because they only more particularly point out and distinctly claim that which was originally claimed, the amendments are not made for reason of patentability in response to a rejection over cited art.

Rejection of Independent Claims Under Section 103

Claims 1, 8, 15, and 22-23 stand rejected as being unpatentable over Li in view of Eicher. Claims 1, 22, and 23 have been canceled. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8 and 15 in view of the clarifying amendments.

Claims 8 and 15 are directed to an apparatus and associated method that features in pertinent part:

continuously display a signal having a first visual characteristic simultaneously to both terminals in response to the user requesting a replenishment of inventory...subsequently modify the signal simultaneously to both terminals to continuously display a second visual characteristic different than the first visual characteristic responsive to the supplier sending the requested replenishment of inventory and during the time that the requested replenishment of inventory is in transit to the user.

Neither Li nor Eicher, nor any other art of record, teaches or suggests a shared signal on both the user's terminal and the supplier's terminal that has a visual characteristic that continuously and simultaneously informs both user and supplier that the replenishment request has been made by the user but not yet sent by the supplier. Similarly, neither Li nor

Eicher, nor any other art of record, teaches or suggests modifying the shared signal on both terminals to continuously and simultaneously inform both user and supplier that the requested replenishment has been sent by the supplier but not yet received by the user because it is still in transit.

A *prima facie* case of obviousness requires a showing of a teaching or suggestion for each claim limitation appearing in the claim.¹ In construing a claim term, the Office is obligated to apply the broadest reasonable interpretation consistent with the specification.² An interpretation that is inconsistent with the specification is not reasonable.³ Further, the Office is obligated to construe the claim language in accordance with its plain meaning.⁴ Here, the Office has broadly pointed to several paragraphs of Li and Eicher without specificity, but none of the cited paragraphs nor any other portion of Li and Eicher substantiate evidence that they teach or suggest these features of claims 8 and 15. For example, the Office and Applicant agree that Li does not disclose a networked communication between the user and supplier terminals (pg. 3 of Office Action) or alerting the user when the requested replenishment is in transit (pg. 5 of Office Action). The Office points generally without specificity to Li paras. [0056-0059] as disclosing alerting the supplier continuously until the replenishment is sent, but the only evidence in that passage or anywhere else in Li is step 407 of FIG. 4 and the descriptions thereof which disclose that “an alert is sent in step 407 to a proxy or a person who can take action.”⁵ Applicant believes the evidence in the record fails to substantiate that Li teaches or suggests either continuously displaying the common signal or the subsequently modifying the common

¹ *In re Royka*, 180 USPQ 580 (CCPA 1974); MPEP 2143.

² *Phillips v. AWH Corp.*, 75 USPQ2d 1321 (Fed. Cir. 2005)(en banc); MPEP 2111.

³ *In re Morris*, 44 USPQ2d 1023 (Fed. Cir. 1997).

⁴ *Phillips, supra*; MPEP 2111.01.

⁵ Li para. [0056] line 20 (emphasis added).

signal as featured by claims 8 and 15. There is likewise no evidence in the record that Eicher cures the deficiency of Li in this regard.

In making a case for obviousness the Office also has the burden of substantiating evidence that the requisite motivation exists for the skilled artisan to combine and/or modify the cited references to arrive at the claimed invention. In assessing whether a case has been made, the obviousness rejection must be evaluated in view of the *Graham*⁶ factors: (a) the claimed invention must be considered as a whole; (b) the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (c) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (d) reasonable expectation of success is the standard with which obviousness is determined.⁷

Considering the claimed subject matter and the cited references, each as a whole, the evidence is conclusive that neither Li nor Eicher, nor any other art in the record, are concerned even generally with providing a continuous signal to both the user's terminal and the supplier's terminal that gives a visual indication as to when the requested replenishment is sent and when it is received. As disclosed in this application, both of those events are important to supply chain management, but not available data in the solutions afforded by the cited references.

The Office has not substantiated a case for obviousness for lack of evidence of a teaching or suggestion of all the features of claims 8 and 15, either from the references or the knowledge of a skilled artisan, and for lack of evidence of the requisite motivation to the skilled artisan to modify and/or combine the cited references to arrive at the claimed

⁶ *Graham v. John Deere*, 383 US 1 (1966).

⁷ See MPEP 2141.

embodiments. Applicant therefore respectfully requests reconsideration and withdrawal of the rejection of claims 8 and 15.

Rejection of Dependent Claims Under Section 103

The dependent claims stand rejected as being unpatentable over Li in view of Eicher and further in view of Hill. Some of the dependent claims have been canceled, others have been replaced by new claims. In any event, there is no evidence in the record that Hill cures the deficiency of Li and Eicher discussed above. Thus, all pending dependent claims are allowable at least for the reason that they depend from an allowable independent claim, for reasons above, and recite additional features.

Applicant therefore respectfully requests reconsideration and withdrawal of all pending claims depending from independent claims 8 and 15.

Conclusion

This is a complete response to the Office Action mailed May 13, 2008. Applicant respectfully requests passage of all pending claims to allowance.

Applicant has also submitted herewith a request for telephone interview. Absent a favorable reconsideration, the interview is necessary and appropriate to facilitate progress on the merits in view of the amendments made herein.

The Office is encouraged to contact the undersigned should any questions arise concerning this response or request for interview.

Respectfully submitted,

By: _____


Mitchell K. McCarthy, Registration No. 38,794
McCarthy Law Group
3580 Northwest Expressway, #353
Oklahoma City, Oklahoma 73120
www.mccarthyiplaw.com
Telephone: (405) 601-2798